

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8351 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

KANOTRA KANA JAGA

Versus

STATE OF GUJARAT

Appearance:

MR CH VORA for Petitioner
NOTICE SERVED for Respondent No. 1, 4
M/S PURNANAND & CO for Respondent No. 3

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 27/11/2000

C.A.V. JUDGEMENT

1. The petitioner-Karotra Kana Jaga has filed this
petition under Article 226 and 227 of the Constitution of

India has challenged the order dated 04/03/1991 passed by the Additional Chief Secretary, Revenue Department (in appeal). The Additional Chief Secretary, Revenue Department was please to allow this revision application & please to set aside the order passed by the Collector dated 07/02/1987, by which the certain portion of the land was given to the petitioner.

2. The facts giving rise to this petition are as under :-

2:1 There is a land which is situated at village Karotra of Kachchh-District admeasuring 84.44 sq.mts. Somewhere in 1985 petitioners applied for obtaining grant of the said land under Rule 43(B) of the Bombay Land Revenue Rules. It has been stated by the petitioner that Gagodar Gram Panchayat in General Meeting passed a Resolution No.47 dated 02/11/1985, and opined that the petitioners' land which is situated near the residential area. The Deputy District Development Officer, Kachchh, after considering the application of the applicant and also after going through the resolution dated 02/11/1985, please to allot the land to the petitione on consideration by him and order dated 07/02/1987 (at Annexure-A to the petition). Considering this request of the petitioner, it may be stated that Shri Vaghjibhai Manabhai Prajapati - original respondent no.4 has objected to grant the said land to the petitioner on the ground that order passed by the above authority. The Deputy Collector, after considering all the facts, the objection of respondent no.4, by his order dated 07/02/1987 (at Annexure-A to the petition) please to allot the land. The copy of the resolution has also produced before me.

3. Being aggrieved by the said order Shri Vaghjibhai Manabhai Prajapati-respondent no.4 has filed an appeal before the Collector. The Collector, after hearing the respondent no.4 and after considering the notice and evidence on record in which he has stated that the Deputy District Development Officer has also visited site on 11/12/1986 and according to him also there is no substance in objection raised by the respondent no.4. Therefore, he confirmed the order of Taluka Development Officer granting the land to the petitioner.

4. Being aggrieved by the dissatisfing the order, the respondent no.4 filed a revision application before Additional Chief Secretary, Revenue Department, Ahmedabad. The Chief Secretary has set aside the order of the Deputy Development Officer as well as the

Collector granting the land in favour of the petitioner. He has also directed that the order passed by the Collector is legal and valid. However, the respondent no.4 may be given opportunity to produce an additional evidence before District Development Officer and directed that District Development Officer should furnish its report alongwith the map. He considered the letter dated 13th August, 1990 issued by the District Development Officer in this behalf and remanded the matter to the authority once again. Mr.Vora, the learned advocate for the petitioner submitted that the respondent-authority has no jurisdiction under Sec.211 of the Code to give such direction allowing the respondent no.4 to produce such addtioinal evidence. Sec.211 reads as under :-

"211. Power of (State) Government and of certain revenue officers to call for and examine records and proceedings of subordinate officers :-

The [(State) Government] and any revenue officer, not inferior in rank to [an Assistant of Deputy Collector] or a Superintendent of Survey, in their respective departments, may call for and examine the record of any inquiry or the proceedings of any subordinate revenue officer for the purpose of satisfying [itself or himself, as the case may be,] as to the legality or propriety of any decision or order passed, and as to the regularity of the proceedings of such officer.

The following officer may in the same manner call for and examine the proceedings of any officer subordinate to them in any matter in which neither a formal nor a summary inquiry has been held, namely a Mamlatdar, a Mahalkari, [an] Assistant Superintendent of Survey and an Assistant Settlement Officer."

Mr.Vora has also invited my attention to the order of this Court dated 20th November, 1991 (Corm : Mr.Justice A.P.Ravani,J.) which reads as under :-

Rule.

By way of interim relief respondents are directed not to take any further action pursuant to the order Accenure-D. The petitioner is also directed to maintain status quo as on today. The petitioner shall file an undertaking in this Court in which he shall make declaration as regards the present position of the land and

shall undertake that he shall maintain status quo as on today till the final hearing and disposed of the petition. The undertaking as stated above shall be filed in this Court latest by December 9, 1991. If the undertaking as stated above is not filed, the interim relief granted hereinabove shall automatically stand vacated without any further order from the Court.

and learned counsel has also submitted that pursuant to the said order, he has filed an undertaking in this behalf. He has further stated in this case, the revisional authority has no appellate power. He has relied upon para-(28) of the judgment reported of this Court reported in 11 GLR 1970 307 Muman Habib Nasir Khanji V/s. State of Gujarat & Ors.

"This reasoning of ours also lends support to our finding on the first point that, against the decision of Collector under Sec.211, no appeal lies to the State Government under Sec.203. Under Sec.211, the Collector exercises, as he did in this case, the revisional powers and, by virtue of the express provisions contained in Sec.211, he confines himself to record and proceedings of the case and examine the legality and propriety of the decision or order of the Prant Officer only on the basis of such record and proceedings. It is needless to add that he examines the regularity of proceedings before the Prant Officer also on the basis of record and proceedings of the case. He arrives at the decision by which he either upholds the decision of the Prant Officer or modifies it or reverses it. Under these circumstances, the Legislature must not have contemplated an appeal to the State Government under Sec.203 from decision of the Collector under Sec.211 because an appeal to the State Government under Sec.203 from the revisional order of the Collector under Sec.211 shall mean that the State Government shall exercise wider powers than the Collector. Normally, the principle which operates in our system of law is that a higher or superior authority, while performing judicial or quasi judicial function in exercise of its superior jurisdiction is required to confine itself to such powers as can be exercised by the subordinate authority in exercise of its original or inferior jurisdiction. We are, therefore, of the opinion that since the State Government in

reality was exercising revisional jurisdiction in this case as contemplated by Sec.211, it had no jurisdiction to receive any additional evidence and in as much as it received the additional evidence it acted without jurisdiction and committed an error apparent on the face of the record. The order of the State Government is, therefore, vitiated in law and cannot be sustained. In this view of the matter, it is not necessary for us to deal with two sets of conflicting arguments advanced by the appellant on one hand and by the State Government on the other hand. We simply record them by stating that it was Mr.Patel's contention that the appellant was not given an opportunity to meet or rebut the additional evidence which the State Government took in this matter and it was the contention of Mr.Shelat on the other hand that the appellant had ample opportunity to meet and rebut this additional evidence but that he had chosen not to do so."

Mr.Vora, learned counsel for the petitioner has stated that in this case, the tribunal has not exercised revisional jurisdiction, but the appellate jurisdiction which is contrary to the judgment of our High Court in the case of Muman Habib Nasir Khanji v/s. State of Gujarat & Ors. (Supra). On behalf of the respondents, they have tried to support the order of this revisional authority. However, she could not able to give any reply as to why the tribunal has exercised appellate powers and has not revisional powers which is contrary to the judgment of this Court.

4. In my view, the submission made by Mr.Vora, the learned advocate for the petitioner is well founded. In my view, the Additional Chief Secretary, Revenue Department has appellate powers and has not revisional powers. I set aside the order passed by the Additional Chief Secretary, Revenue Department dated 04/03/1991 and confirmed the order passed by the District Development Officer and the Collector, wherein the land in question allotted to the petitioner. I, therefore, allow the petition and set aside the revision authority order and confirm the order passed by the authority below. Rule is made absolute. No order as to costs.

(K. M. Mehta,J.)